IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 110 OF 2003.

Christopher Fernandes,
r/o Quepem, Goa. ... Petitioner.

Versus

1. State of Goa,
   through Chief Secretary,
   Secretariat, Panaji.
2. Town and Country Planning
   Department through Deputy
   Town Planner, Quepem.
3. Quepem Municipal Council
   through Chief Officer,
   Quepem, Goa.
4. Shri Cupertino Rebello,
   Councillor, Quepem Municipal
   Council, Quepem, Goa. ... Respondents.

Mr. S.S. Kantak, Advocate for the Petitioner.

Mr. G. Shirodkar, Additional Government Advocate for the Respondents 1 and 2.

Mr. V.P. Thali, Advocate for the Respondent No. 3.

Mr. M.S. Sonak, Advocate for the Respondent No. 4.

Coram : F.I. REBELLO AND
P.V. HARDAS, JJ.

Date : 2nd June 2003.

ORAL JUDGMENT (PER REBELLO, J.)

Rule. Respondents waive service. Heard forthwith.

2. The petitioner by the present petition has moved this Court for various reliefs. Admittedly, the petitioner has constructed a construction without licence from the respondent no. 3. Respondent No. 3 in turn has issued a Show Cause Notice, which is subject

matter of an appeal pending before the competent forum. We are really not concerned with the same.

3. In the present petition, the real relief sought by the petitioner is that the construction put by him without a licence be regularised. Amendment to the Goa Municipalities Act has been published in the Government Gazette Series 1, No. 20, dated 14th October 2002. By Section 16 of the Amending Act, Section 184 has been amended and Sub-Section (21) has been introduced after Sub-Section (20). Sub-Section (21) reads as under:-

> "(21) Notwithstanding anything contained in any other provisions of this Act, the Chief Officer may, subject to the recommendation of the Council, regularize any construction in respect of which no notice as required under sub-section (2) has been given, on payment of a fine equivalent to the fees and taxes payable in respect thereof from the date of commencement of such construction, provided that such construction is as per the building bye-laws and complies with the provisions of any other law for the time being in force.".

It was contended on behalf of respondent no. 3 that the said Sub-Section would only apply in respect of constructions which have come up after the said date.

On a plain reading of the Section as amended, we do not find that such a construction can be placed.

The object of the amendment is to regularize construction which otherwise can be regularized by satisfying the other requirements. We make it clear that we are only dealing with the interpretation of the sub-section. The amendment provides that notwithstanding anything contained in any other provisions of the Act, the Chief Officer may, subject to the recommendation of the Council, regularize any construction in respect of which no notice as required under sub-section (2) has been given. This would mean any construction can be regularized which was constructed without giving notice under sub-section 2. There is nothing in the Section which lends support to the contention sought to be placed on the sub-section on behalf of the respondent no. 3. Once that be the case, there is now power in respondent no. 3 to regularize a construction if otherwise it complies with the provisions of law.

4. In the petition, the petitioner also challenged the decision of the respondent no. 2 in revoking the grant of N.O.C.. Considering the arguments advanced at the Bar and the directions now being issued, it is not necessary to go into that aspect.

5. The petitioner, within 15 days from today, to apply to the respondent no. 3, according to law, for

regularization of his construction. In the event respondent no. 3 calls on the petitioner to produce any N.O.C. from respondent no. 2, the respondent no. 2 to consider it independently irrespective of the revocation of N.O.C. earlier. The application filed by the petitioner to be disposed of thereafter, according to law, and at any rate within a period of 4 months from today.

Rule made absolute accordingly. In the circumstances of the case, there shall be no order as to costs.

(F.I. REBELLO)
JUDGE.

(P.V. HARDAS)
JUDGE.

ed's.